

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of Denial of the Application for) No. CR 2013-02421
the Licenses to Conduct Gambling Activities)
of:)
Aces Casino Entertainment,)
Applicant.)
_____)
)

**SETTLEMENT IN LIEU OF
ADMINISTRATIVE CHARGES**

I.

The applicant, Aces Casino Entertainment (Aces Casino), and the Washington State Gambling Commission enter into this Settlement in Lieu of Administrative Charges to resolve the administrative charges currently pending against the applicant, but not yet issued. Julie Lies, Assistant Director, and Melinda Froud, Staff Attorney, represent the Gambling Commission. Jack Duncan, owner/operator of Aces Casino represents himself.

II.

Ace's Casino, 6301 N Division Spokane, Organization Number 00-23112, has applied for the following licenses:

Number 67-00325, Authorizing Class "8" House-Banked Card Room Activity; and
Number 05-21249 Authorizing Class "A" Punchboard/Pull-Tab Activity.

The applicant was subject to compliance with state gambling laws and regulations when it submitted its application.

III.

SUMMARY:

On December 1, 2013, Fausto Presutti, owner/operator of Aces Casino attempted to make an undisclosed transfer of Aces Casino to Jack Duncan. As a result, the investigation determined that Mr. Duncan and two other individuals gained unauthorized access to secure, limited access areas within Aces Casino.

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FACTS:

- 1) On December 2, 2013, after receiving information from a Washington State Gambling Commission Special Agent (agent) about a change in ownership for Aces Casino, another agent telephoned the owner of record, Fausto Presutti. When asked specifically if he had sold the business to Jack Duncan, Mr. Presutti stated he had relinquished control of Aces Casino to Mr. Duncan effective December 1, 2013. Mr. Presutti stated that Mr. Duncan had told employees they needed to re-apply with the Gambling Commission due to the business change-over. Mr. Presutti stated he had planned to contact Commission staff to "let them know."
- 2) While at Aces Casino, the agent introduced himself to Mr. Duncan, who stated he is the owner of Aces Casino. Mr. Duncan was asked if he thought he could operate Aces Casino under the existing gambling license issued to Mr. Presutti and he stated, "yes." When the agent asked about his ownership interest in Aces, Mr. Duncan stated that Commission staff was aware of the sale documents between him and Mr. Presutti. When Mr. Presutti purchased the card room several years ago, those documents set out that if Mr. Presutti defaulted on the loan, the business would revert back to control and ownership by Mr. Duncan.
- 3) The agent informed General Manager, Eamonn Nelson, and Mr. Duncan that until Commission staff determined whether Mr. Duncan could operate Aces Casino under the current license, he was not to be involved in making operational decisions at Aces Casino, as Mr. Presutti was the individual licensed to operate Aces Casino. Mr. Duncan stated, "fine, I will just call Mr. Presutti and tell him what I want done." Mr. Duncan then stated that he would submit an application for a license if it was required, but he needed to have immediate control over the business to protect his assets. The agent reiterated for both Mr. Nelson and Mr. Duncan that Mr. Nelson could make decisions at the time as the General Manager, but Mr. Duncan was not to do so, which they both agreed to at that time.
- 4) The agent met with Mr. Nelson, who stated that Mr. Presutti, Mr. Duncan, and Mr. Duncan's trustee, Karen Demello, had met at Aces on Saturday November 30, 2013, for several hours. Following that meeting, a notice was posted for all employees notifying them that ownership of Aces had changed, and that the employees were required to re-apply with the Gambling Commission for their work positions. Mr. Nelson stated that in the late morning hours on December 2, 2013, he received a telephone call from Mr. Presutti, who told him that he now needed to stay in control of Aces until they worked out the ownership transfer to Mr. Duncan, and that he would give Mr. Nelson direction until the change-over was resolved.
- 5) On December 2, 2013, the agent contacted Aces Casino Surveillance Manager Doug Knudsen and asked him to review surveillance room logs to determine if Mr. Duncan or Ms. Demello had entered the surveillance room. Mr. Knudsen stated that he knew Ms. Demello had entered the room on December 1, 2013, because he was working in the surveillance room when there was a knock on the door. When he opened the door, a man and a woman were standing outside the doorway. The man introduced himself as Jack Duncan, the new owner of Aces Casino, and the woman as Karen Demello, who was the new CEO of Aces. Mr. Duncan then asked if the count was starting. Mr. Duncan and Ms. Demello entered the room at the time and watched the count for approximately 20 minutes. Mr. Knudsen had Ms. Demello sign the

surveillance room log. Mr. Knudsen stated following the completion of the daily count, he observed Mr. Duncan and Mr. Nelson enter the count room and verify the reserve cash in the count room. Mr. Knudsen was asked by the agent to draft an incident report regarding entry to the surveillance room and the count room by unlicensed individuals and to make a CD copy of the surveillance video.

6) Mr. Knudsen also stated there had been a separate, but unrelated incident concerning entry into the surveillance room by someone that he believed was not licensed. Mr. Knudsen stated that on November 30, 2013, Mr. Duncan, accompanied by Ken Demello, the spouse of Karen Demello, approached the surveillance room and made contact with on-duty surveillance operator Kenny Martinez. Mr. Duncan requested entry so that Mr. Demello could examine the surveillance equipment inside the room, as Mr. Duncan was taking over the operation of Aces. Mr. Knudsen stated when Mr. Martinez asked Mr. Duncan and Mr. Demello if they were licensed to enter the surveillance room, Mr. Duncan asked Mr. Martinez to show Mr. Demello how the Pan-Tilt-Zoom (PTZ) cameras operated. Mr. Martinez asked Mr. Duncan and Mr. Demello to sign the surveillance room log after they entered, but only Mr. Duncan signed the log. Mr. Knudsen stated that he would have Mr. Martinez also complete a casino incident report and make a copy of the surveillance video depicting Mr. Duncan and Mr. Demello entering the surveillance room.

7) On December 3, 2013, Ms. Demello spoke to the agent regarding Aces Casino. Ms. Demello stated she was married to Mr. Demello, who was the head of security for the Spokane Community College. She was the trustee for the Duncan Children Family Trust, a Texas Irrevocable Trust which was established for the benefit of Jack Duncan's three children. Ms. Demello stated that she was assisting Mr. Duncan to establish another trust for other assets owned by him, due to his health. She stated that Mr. Duncan's doctor wanted Mr. Duncan to distance himself from the stress of operating his businesses. Mr. Demello has known Mr. Duncan for a couple years.

8) Ms. Demello stated that she had applied for a Card Room Employee (CRE) license December 2, 2013, after she had been contacted by the agent. Ms. Demello stated Mr. Duncan called her on November 27, 2013, and said he was flying in on Friday because Fausto Presutti had told him that he was closing the doors on Aces and Mr. Duncan wanted to protect his assets. Mr. Duncan informed her that he was still the owner of Aces Casino, and Mr. Presutti was only the Chief Operating Officer for Aces. Ms. Demello stated that Mr. Duncan still considered Aces one of his assets and it was included in his company JD's Dragon. After arriving at Aces Casino, she and Mr. Duncan met with Mr. Presutti. Mr. Duncan told Mr. Presutti he had to pay him his money. Ms. Demello stated that Mr. Presutti was two and one-half months behind on the note to Mr. Duncan. In response, Mr. Presutti said, "I don't have it."

9) Mr. Presutti said he was going back to Vegas and letting go of Aces. Ms. Demello stated he was walking away from Aces and turning the business over to Mr. Duncan. Before Mr. Presutti left the meeting, Mr. Duncan told Ms. Demello to go with Mr. Presutti to the bank and add her name on the business bank account. On November 30, 2013, Mr. Duncan, Mr. Presutti, and Ms. Demello met again. Mr. Duncan accused Mr. Presutti of "stealing the business blind."

10) On December 1, 2013, Mr. Duncan took Ms. Demello to the surveillance room, and the surveillance operator asked if they were licensed. Mr. Duncan said they both were licensed. Ms. Demello stated she didn't know what kind of license he was talking about. After entering the surveillance room, she signed a log because Mr. Duncan wanted her to watch the count to see how it was done. Ms. Demello was asked if either Mr. Duncan or she entered the count room. Ms. Demello stated that she was aware that Mr. Duncan went into the count room, but she didn't go into that room. Ms. Demello stated that Mr. Duncan wanted to confirm his suspicion that money was missing. Mr. Presutti said there was \$40,000 "in there," but there was only \$30,000 in there at the time. Mr. Duncan believed there was \$10,000 missing.

11) The agent asked if Ms. Demello's husband had also entered into the surveillance room at Aces Casino. Ms. Demello stated that on November 30, 2013, Mr. Duncan wanted her husband to go into the surveillance room and check it out, but the surveillance operator wouldn't allow them in.

12) On December 26, 2013, the agent was informed that a new application had been submitted on behalf of Jack Duncan to obtain a license to operate Aces Casino Entertainment.

13) During the period of January 2-3, 2014, the agent reviewed copied of surveillance recordings provided by Mr. Knudsen. As a result of those reviews, the agent printed copies of photographs of the following:

- Mr. Duncan and Mr. Demello entering the surveillance room at Aces Casino on November 30, 2013.
- Mr. Duncan and Mr. Nelson in the limited access cage and count room conducting a cash verification count on December 1, 2013.
- Mr. Duncan and Ms. Demello gaining access to surveillance room at Aces Casino on December 1, 2013.

14) On January 3, 2014, the agent conducted a review of access logs obtained from Mr. Knudsen and noted the following:

The November 30, 2013, surveillance log reflected a signature of Jack Duncan entering the surveillance room at 13:53 hours and departing the room at 13:56 hours.

The December 1, 2013, surveillance log reflected an indistinguishable signature of a person noted as the owner/CEO entering the surveillance room at 10:07 hours and departing at 10:45 hours. Based on review of surveillance video taken during that time period, it was assumed the indistinguishable signature was made by Ms. Demello.

The December 1, 2013, Cage Room access log reflected the initials of Mr. Nelson being noted as "EJ" accessing the room at 11:29 hours and departing at 11:41 hours. No entry associated with Jack Duncan was noted on that log based on a review of the associated surveillance video, and there was no indication that Jack Duncan personally signed that log after entering the cage room.

The December 1, 2013, Count Room log reflected a signature of Mr. Nelson entering the count room at 11:30 hours for the purpose of an "Audit," with departure noted at 11:41 hours. Also reflected on that log was the name "Jack" entering and departing at the same times as Mr. Nelson, also for the purpose of an "Audit." Based on a review of associated surveillance video, it appeared that Nelson signed the count room log for both Duncan and himself, as Duncan was never depicted actually signing any logs inside the cage or count rooms.

VIOLATIONS:

1) RCW 9.46.075(1) provides the Commission may deny an application if the applicant has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by Chapter 9.46 RCW or any rules adopted by the Commission pursuant thereto.

2) WAC 230-03-085(1) provides the Commission may deny an application for a license when the applicant commits any act that constitutes grounds under RCW 9.46.075 for denying an application or commits any other act that the Commission determines constitutes a sufficient reason in the public interest for suspending licenses or permits.

3) RCW 9.46.185 Causing person to violate rule or regulation provides that any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

4) WAC 230-15-320(1) Surveillance room requirements for house-banked card game licensees. House-banked card game licensees must maintain one or more surveillance rooms. They must: (The following subsection applies.)

(1) Control access to the surveillance room so that only surveillance department employees use the room. Owners or their approved supervisory or management personnel may also enter the surveillance room to monitor activities. Licensees may allow authorized personnel to escort any other person into the surveillance room for educational, investigative, or maintenance purposes.

5) WAC 230-15-565 Access and entrance to cashier's cage. (The following subsections apply.)

(1) House-banked card game licensees must limit entry to the cashier's cage to authorized personnel. Licensees must place on file with the accounting department the names of all persons: (a) Authorized to enter the cage; and (b) Who have the combination, keys, or the mechanism to open the locks to the entrance of the cage; and (c) Who have the ability to operate the alarm systems.

(2) Licensees must keep a sign-in log in the format we require of all persons accessing the cashier's cage.

6) WAC 230-03-055 provides that applicants and licensees must notify us if any information required on the application changes or becomes inaccurate in any way within ten days of the change.

Mr. Duncan gained unauthorized access to secure, limited access areas within Aces Casino for Trustee Karen DeMello, spouse Ken DeMello, and himself on multiple occasions, violating RCW 9.46.185, WAC 230-15-565 and WAC 230-15-320. Grounds exist to deny Ace's Casino Entertainment application under RCW 9.46.075(1) and WAC 230-03-085(1).

IV.

The licensee, Aces Casino Entertainment, acknowledges that it violated Commission rules, and has indicated its willingness to comply with gambling rules and regulations. In lieu of formal proceedings the parties agree to settle this matter under the following terms:

1) The parties agree that after obtaining licensure, Ace's Casino Entertainment's license is suspended for a period of **fifteen (15) days**, provided that:

- a) **Ten (10) days** of the suspension shall not be currently served, but shall be deferred for a period of one (1) year from the date of entry of this Settlement, subject to the following: Aces Casino must not violate Washington's gambling statutes or rules during the one (1) year term. If the applicant violates such statutes or rules, and if the violation is the type that warrants the filing of administrative charges, then the Director may impose up to **ten (10) days** of the deferred suspension on the current gambling licenses, and any subsequently acquired gambling licenses.
- b) The parties agree that the Director of the Washington State Gambling Commission, pursuant to this Settlement, has sole discretion to determine whether the licensee has violated any term of this Settlement. In the event the Director determines a violation has occurred, he may suspend the licenses issued to Aces Casino by mailing or delivering a Notice of Order of Administrative Charges to the licensee. In addition to the consequences of the new violation, the licensee shall serve all, or part of the deferred sentence. The licensee shall have the opportunity to request an adjudicative proceeding, which includes a hearing on the alleged violations.
- c) Pursuant to RCW 9.46.077, the applicant shall vacate the remaining **five (5) days** of the suspension by paying a penalty of **\$1,500 (one thousand, five hundred dollars)**. The applicant also agrees to reimburse the Commission for its investigative and administrative costs of **\$3,500 (three thousand, and five hundred dollars)**, for a total penalty of **\$5,000 (five thousand dollars)**. The applicant shall pay this total penalty no later than **February 7, 2014**, by mailing payment to Commission Headquarters at the following address:

Washington State Gambling Commission
Attn: Communications and Legal Division
P.O. Box 42400

Olympia, WA 98504-2400;

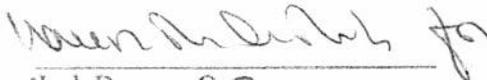
or **delivering** (in person or via private courier) payment to Commission Headquarters at the following address:

Washington State Gambling Commission
Attn: Communications and Legal Division
4656 7th Avenue SE
Lacey, WA 98503

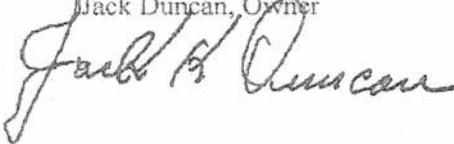
2) If the applicant makes its payment by the date agreed to in this settlement, this matter will be deemed closed. If the applicant fails to timely make its payment, staff will not recommend approval of the license application, and Aces Casino's application will not be forwarded to the Commission for approval.

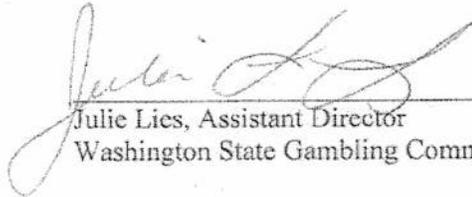
DATED this 3 day of FEBRUARY, 2014.

AGREED TO BY:

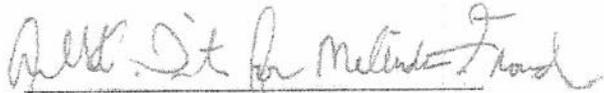


Jack Duncan, Owner





Julie Lies, Assistant Director
Washington State Gambling Commission



Melinda Froud, Staff Attorney
Washington State Gambling Commission

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